

BOARD OF APPEALS CASE NO. 5248

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BEFORE THE

APPLICANT: Samuel D. Hobbs, III

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ZONING HEARING EXAMINER

REQUEST: Variance to construct an in-ground swimming pool within the required front yard setback, 3113 Peverly Run Road, Abingdon

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/3/02 4/10/02

HEARING DATE: June 3, 2002

Record: 4/5/02 & 4/12/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Samuel D. Hobbs, II, is seeking a variance from the provisions of Section 267-26C(4) of the Harford County Code, to construct an in-ground swimming pool within the required front yard setback in an R1/Urban Residential District.

The subject parcel is located at 3113 Peverly Run Road in the subdivision of Woodland Run. The parcel is more particularly identified on Tax Map 62, Grid 1A, Parcel 16, Lot 121. The parcel consists of 13,808 square feet, is zoned R1/Urban Residential and is entirely within the First Election District.

The Applicant, Mr. Samuel Hobbs appeared and testified that he wants to construct an in-ground pool on his property that measures 28 feet by 16 feet and will have an average depth of 3 feet to 6 feet. His lot is a corner lot and is subject to two front yard setbacks. The pool will be located to the left side of his house along Marsh Court. To the right rear of the property is a shed and a playground area for the Applicant's two children. The Applicant admitted that he could put the pool on the property without the need for a variance if he moved the shed and playground area. His testimony was that he felt it was unnecessary to go to the trouble and expense of moving the shed and playground area and that requiring him to do that was a "hardship" that creates the need for the variance.

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Mr. Dennis Sigler appeared on behalf of the Department of Planning and Zoning. Mr. Sigler stated that the Department recommended that the request be denied because there were no unique characteristics of this parcel that resulted in the need for a variance. The rear yard of the Applicant's house can accommodate the proposed pool without a variance, however, the Applicant has placed a shed and playground in such a position that the pool will encroach into the setback along Marsh Court. Mr. Sigler did not think that requiring the Applicant to rearrange things in his backyard imposed a hardship that warranted the grant of a variance.

There were no persons who appeared in opposition to the request.

CONCLUSION:

The Applicant, Samuel D. Hobbs, II, is seeking a variance from the provisions of Section 267-26C(4) of the Harford County Code to construct an in-ground swimming pool within the required front yard setback in an R1/Urban Residential District.

Harford County Code Section 267-26C(4) provides:

"No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in Section 267-23C, Exceptions and modifications to minimum yard requirements."

The Harford County Code, pursuant to Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

In the instant case, the Hearing Examiner finds that the parcel is a unique corner lot. Because of the corner configuration, the lot is constrained by additional setbacks that non-corner lots do not have. However, a finding of uniqueness alone does not warrant the grant of a variance.

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The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two-step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

While the Applicant has demonstrated that he can meet the requirements of the first test of Cromwell, there is no practical difficulty or hardship that results from the uniqueness attributable to this property. The Applicant admitted and the plats of the parcel confirm that the Applicant simply needs to move a shed and a children's playset in order to install his in-ground pool without the necessity of obtaining any variance at all.

While the Hearing Examiner agrees that the placement of the pool in the location proposed by the Applicant would be a simpler process, that alone does not make it a hardship warranting the grant of a variance.

For the reasons stated herein, the Hearing Examiner recommends that the variance be denied.

Date: JUNE 26, 2002

William F. Casey
Zoning Hearing Examiner